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IN THE

Supreme Court of the United States

October Term, 1961

No. 368

Michigan Gas and Electric Company, Petitioner

v.

Federal Power Commission,
Michigan-Wisconsin Pipe Line Company,
Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Brief Amici Curiae of the Cities of Gladstone, Iron Mountain, Ishpeming, Kingsford, Marquette, Negaunee, and Norway, Michigan, in Support of the Petition for a Writ of Certiorari.

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This amici curiae brief is submitted jointly by the cities of Gladstone, Iron Mountain, Ishpeming, Kingsford, Marquette, Negaunee, and Norway (hereinafter collectively referred to as "Municipalities"). It is filed pursuant to Rule 42 (4) of the rules of this Court and in support of the petition for a writ of certiorari filed in the above case by Michigan Gas and Electric Company on August 30, 1961.

The filing of this brief has been authorized by resolutions adopted by the governing council of each of the Municipalities because the issue presented by Michigan Gas and Electric's petition is a matter of grave and vital concern to the Municipalities, to the Upper Peninsula of Michigan in which they are located, and to the general citizenry of the Upper Peninsula. The economic future of the Upper Peninsula is involved in this case. The outcome of this case will determine whether the Upper Peninsula can obtain reasonably-priced natural gas which will go a long way in enabling it to put an end to, and reverse, the economic deterioration now existing in the area.

The Municipalities adopt as part of this brief the statement of the facts, question presented, and reasons for granting the writ as set forth in Michigan Gas and Electric's petition. The Municipalities believe that the petition filed by Michigan Gas and Electric conclusively demonstrates why this Honorable Court should review the decision of the Court of Appeals. In this brief, the Municipalities want to bring the following specifically to the attention of your Honorable Court.

1. The Upper Peninsula is one of the few large areas of the country that does not have natural gas service. It is an economically depressed area; classified by the United States Department of Labor as an area of substantial and chronic labor surplus. One of the reasons for the area's condition is that it is at present largely dependent upon one industry—the iron-ore mining industry. This industry is now having difficulties in competing with high grade iron ores produced and processed in other parts of the country and imported from abroad. The local iron ore industry has developed processes to convert the local low grade iron ores into a

pellitized high-grade form in an effort to compete with the high grade iron ores from other parts of the country and abroad. An abundant and dependable supply of reasonably-priced natural gas—the ideal fuel for the conversion processes which require large quantities of heat—would help the local industry's competitive position.

The absence of natural gas service has also been an important factor in preventing the Upper Peninsula from attracting new industries and retaining existing industry. Within the past month, the largest producer of charcoal briquets in the country abandoned its Upper Peninsula operations in Kingsford, one of the Municipalities, because of the company's inability to manufacture a product in the Upper Peninsula which could compete on the open market. The loss of this industry represents an annual loss to the economy of the Upper Peninsula of $5,000,000 and a direct loss of jobs to over 350 people in Kingsford alone.

Moreover, the long, cold winters of the Upper Peninsula impart to natural gas service a special importance for residential and commercial spaceheating.

2. Although the Commission's decision in this case authorized natural gas service to the Upper Peninsula, the gas cannot be reasonably priced to aid the industrial development of the area and to provide a sounder and healthier economy. Under these circumstances, the Commission's allotment of natural gas to the Upper Peninsula is worthless. This is so only because the Commission's order imposes the full cost ($8,000,000) of the pipeline connection from Menominee, Michigan, to the Municipalities, upon the Upper Peninsula.

On no other area supplied by Michigan Wisconsin Pipe Line Company has the full cost of the pipeline connection been imposed. For all other areas served by it, Michigan Wisconsin has built the pipeline connection needed, in whole or in part.

The Commission's refusal to give the Upper Peninsula the same treatment plainly discriminates against it. The service to be provided the Upper Peninsula is clearly inferior to the service received by the other areas. Yet, under the Commission's order, the Upper Peninsula is to pay Michigan Wisconsin the same rate paid by the other areas which have far superior service!

As the petition filed by Michigan Gas and Electric demonstrates, the Commission recognized that this discriminated against the Upper Peninsula and that Michigan Gas and Electric has suggested various alternatives for its elimination. The Commission, however, rejected these suggestions and left the discrimination outstanding because it thought the Upper Peninsula was seeking favored treatment.

But the Upper Peninsula was not and is not now seeking favored treatment. Nor does the Upper Peninsula seek a subsidy. It asks only the same treatment from Michigan Wisconsin that the other areas receive for the same rate. Freed of the discriminatory burden, the gas can be sold in the Upper Peninsula at rates that will attract industry, retain existing industry, and strengthen the iron-ore mining industry's competitive position on the market.

Erroneous also was the Commission's failure to devise a non-discriminatory basis for service to the Upper Peninsula. Unlike a court, the Commission is not

limited by the alternative proposals presented by the parties. Instead, once it has uncovered the discrimination, it has an affirmative duty, owed directly to the public under the Natural Gas Act, to eliminate the discrimination irrespective of the posture of the parties.

The Commission's erroneous conception of its duty, together with the error's drastic consequences for the Upper Peninsula, makes it of urgent importance to the Upper Peninsula that this Honorable Court take favorable action on the petition for a writ of certiorari filed by Michigan Gas and Electric Company.

Respectfully submitted,

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